

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ISMAEL GUTIERREZ,)	
)	
Plaintiff,)	NO. CV-05-051-MWL
)	
v.)	ORDER GRANTING MOTION FOR
)	CONSOLIDATION
JO ANNE B. BARNHART,)	
Commissioner of Social)	
Security,)	
)	
Defendant.)	

The Commissioner moved on June 9, 2005 for dismissal of the complaint. In the alternative, defendant moved for consolidation of the above captioned case with case number CV-05-97-CI. (Ct. Rec. 7.) Plaintiff has not filed a response. The parties have not consented to proceed before a magistrate judge. The Court **GRANTS** defendant's motion for consolidation.

The Commissioner seeks dismissal pursuant to Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction. Defendant alleges that the complaint filed on February 16, 2005, was premature in that on March 7, 2005, the Appeals Council filed an amended response to plaintiff's request for review. (Ct. Rec. 8.) On April 4, 2005, plaintiff filed a second complaint, CV-05-97-CI. The administrative record has already been filed by the Commissioner in this case.

1 After considering the defendant's motion and the record
2 herein,

3 **IT IS ORDERED:**

4 1. The Court **GRANTS** defendant's motion for consolidation of
5 this case with CV-05-97-CI.

6 2. The District Court executive shall file all documents
7 under the case number CV-05-97-CI and **CLOSE THIS FILE**.

8 **IT IS SO ORDERED.** The District Court Executive shall enter
9 this Order and furnish copies to the parties.

10 **DATED** this 22nd day of June, 2005.

11
12 s/ Michael W. Leavitt

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14 MICHAEL W. LEAVITT

15 United States Magistrate Judge
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